

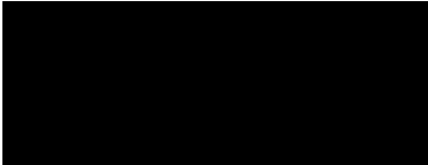


U.S. Department of Justice

Immigration and Naturalization Service

V

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



Public Copy

File: SRC 00 018 51919 Office: Texas Service Center

Date: JAN 21 2000

IN RE: Petitioner:
Beneficiary



Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(ii)(b)

IN BEHALF OF PETITIONER: Self-represented

Identifying information
prevent clear identification
invasion of personal privacy

INSTRUCTIONS:

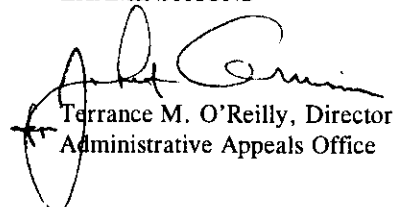
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center, and certified to the Associate Commissioner for Examinations for review. The director's decision will be affirmed and the petition will be denied.

The petitioner is in the business of operating a lawn and garden nursery. It desires to continue the employment of the beneficiary. The petition indicates that the beneficiary has been working for the petitioner from April 8, 1992 until present. The director determined that absent a new certification, the petitioner did not meet the statutory requirement necessary for approval. The director certified his decision to the Associate Commissioner for Examinations for review.

The regulations at 214.2(h)(15)(ii)(C) states that:

an extension of stay for the beneficiary of an H-2A or H-2B petition may be authorized for the validity of the labor certification or for a period of one year...The alien's total period of stay as an H-2A or H-2B worker may not exceed three years....

The petitioner is presently requesting an extension of the beneficiary's stay. Absent a new temporary labor certification from the Department of Labor valid for the period of time requested, the petition cannot be approved. The petition cannot be approved for another reason. The beneficiary's total period of stay as an H-2A worker cannot exceed three years. According to the petition, the beneficiary has already been in the United States for a total of 8 years.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not met that burden.

ORDER: The director's decision will be affirmed. The petition is denied.